THE LEGISLATIVE HISTORY OF EXCLUSION LEGISLATION

By Chester Lloyd Jones, Ph.D.,
Intructor in Political Science, University of Pennsylvania, Philadelphia.

The laws passed in various countries restricting Oriental immigration are of two classes, relating to coolie labor and regulating the general immigration of Oriental races. Experiments with coolie labor have been made under many conditions and satisfactory results have often been obtained, especially in tropical countries, where the white man cannot do heavy work. But in the temperate zones the presence of the coolie is always unwelcome to the white laborer, whom he undersells, and if provision is not made for his return to his native country at the end of his labor term he soon becomes quite as objectionable to the white employer as to the laboring classes. His economic advantages soon enable him to leave the rough work for which he was engaged and to push his way through artisanship to commerce and manufacture. When that occurs the upper classes of the dominant race begin to see their own field encroached upon and the legislation becomes of the second class—that directed against the general immigration of Oriental races.[1]

Through this development the United States has passed, for though nominally we have prohibited coolie labor since the days of the Burlingame treaty, it must be admitted that through much of the time the employment of Chinese was under the control of contractors who only veiled the conditions of employment in such a way as to avoid the terms of the treaty. Then as the Chinese who had served their terms and those who came of their own free will entered the various occupations, the laborers and at last the whole west coast population, cried out for general exclusion, which now they would have extended to cover Japanese, Koreans and even the Aryan Hindoo, as well as the despised Chinaman.

The immigration from China—the first to start from the Orient—in the beginning caused no comment. It grew but slowly. In the

[1]See discussion of Oriental Labor in South Africa, elsewhere in this volume. Peru is going through the same experience. A decree was issued May 14, 1909, suspending Chinese immigration pending action by the Congress.

period 1820-40 there were but eleven arrivals; the next twelve years brought but thirty-five. In 1854 came the first notable increase, 13,110 entering California in that year. Locally prejudice began to crystallize against the newcomers, but the government at Washington was complacent in the belief that no fear was justified, for the Chinese came only to earn money and return, seldom bringing their wives. It regarded "adverse legislation" as "not at all likely."[2] There was, up to 1870, only an occasional entry from Japan. The Secretary of Agriculture favored Orientals for rough work, they "would really operate only as labor-saving machinery does."[3] The Burlingame treaty was adopted in 1869 with no protest. It was still felt that a regulation of coolie labor was all that was necessary.

California, however, was soon convinced that restriction was needed. On December 22, 1869, an unsuccessful effort was made to secure action by Congress.[4] In 1872 the legislature instructed the representatives in Congress to urge the making of a treaty which should discourage Chinese immigration.[5] Similar action was taken two years later.[6] Congress finally appointed a joint special committee to investigate Chinese immigration in the summer of 1876. The committee, in its report of over 1,200 pages, reached no definite recommendations, though the tone of the report was anti-Chinese. The evidence was confused and conflicting. California was held to have advanced more rapidly through the presence of the Chinese, they were found to live in unsanitary quarters, and their "many young children," were provided with no education.[7]

From this time on protest and defense became continuous. The legislature of California in 1877 protested to Congress against the social, moral and political effect of Chinese immigration.[8] The male adults almost equaled the voting population of the state. "No nation, much less a republic, can safely permit the presence of a large and increasing element among its people which cannot be assimilated." On the other hand, the congressional committee's re-

[2]House Exec. Doc., 3d Sess., 41st Cong., Vol. 13, pp. 572-6.
[3]*Ibid.*
[4]See House Report, 45th Cong., 3d Sess., No. 62.
[5]House Misc. Doc., 42d Cong., 2d Sess., No. 120.
[6]House Misc. Doc., 43d Cong., 1st Sess., 204. See also protest from Beaver County, Pa., against the importation of 165 Chinese by a cutlery company. House Misc. Doc., 42d Cong., 3d Sess., No. 181.
[7]Senate Report, 44th Congress, 2d Sess., No. 689.
[8]House Misc. Doc., 45th Cong., 1st Sess.. No.. 9.

port is impunged as *ex parte* and largely mistaken.[9] The Chinese are defended for the work they did which made the transcontinental roads possible and for the draining of over a million acres of tule lands in California, which, without them, would have remained waste.[10] It is pointed out that in California the Chinese pay school taxes, but they are excluded from the schools—only one little girl out of over 3,000 was studying in a public school. In Congress bills were introduced for placing a head tax of $250.00 on each Chinese immigrant and making evasion of the tax a crime punishable by five years' hard labor in the state prison.[11] The legislature in 1878 again appealed to Congress for relief,[12] and a house committee reported that China "was separated from us by a comparatively narrow ocean," the rates on which had by competition fallen from fifty dollars to twelve; that as a result the Chinese worked on the Pacific Coast for from twenty to thirty cents a day, slept in crowded quarters "like sardines in a box" and were unassimilable, and, therefore, undesirable as an element of our population.[13] China, it is asserted, does not favor emigration, hence there is no fear of international difficulty. "But were it otherwise the harmony and perpetuity of our social and political institutions" could not be weighed against any advantage of Chinese commerce. Thus early was the importance of keeping California "a white man's country" an impelling motive in the movement for restriction urged by these repeated appeals.

Congress finally decided not to wait longer for action by the treaty power. "So long a period of non-action proved either the non-willingness or the inability of the treaty-making power to cope with the question. . . . This whole question is not one of right, but one of policy.[14] The house passed a bill limiting the number of passengers which might be brought by any one vessel to fifteen. The senate amended by stipulating for abrogation of two articles of our treaty with China. President Hayes vetoed this bill because it would force us to break the faith of a treaty—and would expose our citizens in China to retaliation. He believed that a modification of the treaty would be willingly assented to by China.[15] Accord-

[9]Senate Misc. Doc., 2d Sess., 45th Cong., No. 20.
[10]*Ibid.*
[11]Senate Misc. Doc., 2d Sess., 45th Cong., No. 36.
[12]House Misc. Doc., 45th Cong., 2d Sess., No. 20, February 4, 1878.
[13]House Report, 45th Cong., 2d Sess., No. 240, February 25, 1878.
[14]House Report. 45th Cong., 3d Sess., No. 62.
[15]House Exec. Doc., 45th Cong., 3d Sess., No. 102, March 10, 1879.

ingly, the following year negotiations for change of the treaty were undertaken.[16] Meanwhile California had submitted the question of exclusion to a popular vote. The result indicates the popular feeling. Within 4,000 of the entire state vote was cast, of which number 154,638 votes were against and 883 in favor of Chinese immigration. "The result of such a verdict comes up to the American Congress with a degree of force that cannot safely be resisted," reported the select committee charged with investigating the causes for the existing depression of labor in 1880. So important apparently did they think this question that their report deals only with Chinese immigration, though the instructions were to investigate all reasons for the depression of the labor market. The discussion presented, though prejudiced throughout, gives a good idea of the state of public opinion at the time in the coast states—from which came the majority of the members of the committee.[17] "The Sierra Nevadas now mark the pagan boundary. Let us make a solemn decree that beyond that high boundary the invading swarm must stop."[18]

The treaty of November 5, 1881, aimed to stop this ill feeling by providing that the United States might "regulate, limit or suspend" "the coming of Chinese laborers . . . but (might) not absolutely prohibit it." Congress was in a spirit to exercise the maximum of the power thus granted and passed a bill suspending immigration for twenty-five years. Like its predecessors, the measure was vetoed. President Arthur declared neither party contemplated a prohibition of so long a term. He stated in his message to Congress, "I regard this provision of the act as a breach of our national faith."[19] The bill failed to pass over the veto,[20] and at once other bills providing for ten, sixteen and twenty-year periods of exclusion were introduced. Finally a compromise between the legislature and the executive was reached in the bill approved May 6, 1882. It was a measure framed by the representatives of the three states and two territories most affected, "all the talent of the Pacific Coast (being) enlisted in its drafting."[21] The immigration of Chi-

[16]House Exec. Doc., 46th Cong., 2d Sess., No. 70.

[17]House Report, 46th Cong., 2d Sess., No. 572, March 19, 1880.

[18]*Ibid.*

[19]Senate Exec. Doc., 47th Cong., 1st Sess., No. 148, April 4, 1882. See also House Report, 47th Cong., 1st Sess., No. 67, January 26, 1882; House Report, 47th Cong., 1st Sess., No. 1017, April 12, 1882.

[20]House Report, 47th Cong., 1st Sess., No. 1017, Part II, April 14, 1882.

[21]House Report, 48th Cong., 1st Sess., No. 614, March 4, 1884.

nese laborers was suspended for ten years, except of such as were in the United States November 17, 1880, or should come within ninety days after the passage of the bill. Those lawfully in the United States could return to China without losing the right of entry here by taking out a "return certificate" at the port in the United States whence they sailed. Great difficulty at once arose in administering the law, some of its provisions could not be executed, others were easy of evasion and in some cases there was great corruption in the sale by the immigration officers of certificates entitling a man to return to the United States.[22] Minor amendments to the law were added July 5, 1884.

From the first this law did not satisfy the West, which had had a free hand in its framing. In March, 1886, an anti-Chinese state convention was held in Sacramento to memorialize Congress in favor of absolute prohibition.[23] Numerous riots due to race prejudice occurred in all the western states.[24] At Rock Springs, Wyoming, a night attack by 150 armed men was made upon the Chinese, their houses were plundered and then burned, the Chinese were pursued and shot "like a herd of antelopes, making no resistance." In many towns in California they were driven out, sometimes without notice, in other cases after warning; at some seaports they were forced on board boats returning to China. The local authorities regularly refused to interfere to prevent or punish abuse of the Orientals. President Cleveland, in a message asking Congress to pay damages as an act of friendship, a suggestion later acted upon, asserted that "the proceedings in the name of justice for the ascertainment of the crime and fixing the responsibility therefor were a ghastly mockery of justice."

Such conditions were not to be borne. In 1886 China undertook to prohibit the coming of laborers to this country and later agreed to a treaty which would allow the United States a free hand in the matter. In the expectation that his agreement would be ratified, Congress undertook thoroughgoing exclusion legislation. At the last moment, however, China took action which was held to indicate a desire to block the negotiations indefinitely.[25] On that account

[22]See especially House Exec. Doc., 48th Cong., 2d Sess., No. 214.

[23]Senate Misc. Doc., 49th Cong., 1st Sess., No. 107, April 28, 1886.

[24]House Exec. Doc., 49th Cong., 1st Sess., 102. Message of President Cleveland gives numerous instances.

[25]Senate Exec. Doc., 50th Cong., 1st Sess., No. 273.

President Cleveland decided to approve the bill which had been intended to be supplemental to the treaty, alleging that the United States was called upon "to act in advance by the exercise of its legislative power."[26]

The act of 1888 excluded all Chinese except certain classes, such as officials, teachers, merchants or travelers. Even such could come only after getting permission of the home government and an identification slip issued by the consular representatives of the United States at the port of sailing. Chinese laborers already in this country, except if they had a family or property worth $1,000, could not return if they left the United States. Those having these qualifications could return within one year upon producing the return certificates which it was provided should be issued at their departure. This law, like that of 1882, was evaded. Fraudulent certificates, smuggling across the borders of Canada and Mexico, and abuse of transit privileges were alleged as the most frequent abuses.[27] To meet this difficulty Congress at once took up measures for the enumeration of all Chinese in the country and providing that all not having certificates should be deported.[28]

No law on this subject was passed, however, until 1892. The exclusion proper rested on the act of 1882, which, by the ten-year limitation, was then soon to go out of force. To avoid this possibility the Geary act was passed, continuing in force all anti-Chinese legislation for another decade. The changes which had been urged were also incorporated. It was provided that all Chinese must have certificates to prove their right to remain. If any were found illegally within the United States they were to be deported, unless some good reason for not having procured the certificate was shown and actual residence at the time the law was passed could be proven by at least one witness other than Chinese.[29]

The Chinese employed counsel—among whom was Hon. Rufus Choate—to contest the constitutionality of this law. By advice they did not register, and when the court had rendered its decision up-

[26]Act of September 13, 1888, c. 1015, 25 Stat. 476; see also act of October 1, 1888, c. 1064, 25 Stat. 504.

[27]Senate Exec. Doc., 51 Cong., 1st Sess., No. 97.

[28]Senate Exec. Doc., 51st Cong., 1st Sess., No. 106; Senate Misc. Doc., 51st Cong., 1st Sess., No. 123, April 9, 1890; House Report, 51st Congress, 1st Session, No. 486, February 27, 1890; House Report, 51st Cong., 1st Sess., No. 2915, and House Report, 51st Cong., 2d Sess., No. 4078.

[29]Act of May 5, 1892, c. 60, 27 Stat. 25. See House Exec. Doc., 52d Cong., 1st Sess., No. 224.

holding the law the time for registering was passed. All were, therefore, technically liable to deportation; so, to relieve this situation, Congress extended the registration period for six months. Additional rules were also provided, and to aid identification it was required that the return certificates be accompanied by a photograph of the recipient.[30]

The following year a new treaty with China embodied practically the items of the Geary act and abolished the provision of the act of 1888, by which laborers leaving the United States were denied the privilege of return. It was to last for ten years, at the end of which time, in 1904, China declined to renew it. In the meantime Hawaii had been annexed and the exclusion laws were extended to that territory by the "act to provide a government for the territory," approved April 30, 1900.[31] The second period for which the exclusion act of 1882 was being enforced had also come to an end. As that time approached interest in the exclusion laws had again become intense on the Pacific Coast, especially under the lead of the American Federation of Labor.[32] Typical of public opinion also was a convention held in San Francisco November 21, 1901, composed of state, county and city officers and representatives of trade organizations to the number of 3,000. It voted unanimously for exclusion.[33] The Chinese minister, on the other hand, exerted his influence through the Department of State in opposition to the re-enactment of the discriminating legislation.[34] The minister particularly objected to the harsh administration of the laws by the Treasury Department, especially since 1898. He showed that the act was originally aimed at laborers only, but that the government now excluded every one not specifically named in the exempt classes, including even bankers, physicians and other classes, against whom the law was never intended to act. A protest against the inclusion of Hawaii was made on the ground that it could never be a field for exploitation by Anglo-Saxon laborers. A similar objection was raised to the act of General Otis in extending the exclusion acts to the Philippines.

[30]House Report, 53d Cong., 1st Sess., No. 7, October 4, 1893; Act of November 3, 1893, c. 14, 28 Stat. 7.

[31]Senate Report, 55th Cong., 3d Sess., No. 1654, February 13, 1899. See also U. S. Statutes, 1897-8, p. 751, and House Doc., 56th Cong., 2d Sess., No. 464.

[32]Senate Doc., 57th Cong., 1st Sess., No. 137.

[33]Senate Doc., 57th Cong., 1st Sess., No. 191.

[34]Senate Doc., 57th Cong., 1st Sess., No. 162.

But the country had by this time become accustomed to the exclusion acts and Congress was satisfied with their principle. There was no difficulty in inducing the legislature to accede to the demand for the indefinite extension of the life of the laws by the act of April 22, 1902.[35] This law expressly extended the legislation to all the island territories and prohibited the emigration of Chinese from them to the continental United States or from islands to other islands not of the same group. In fact, this rule had been applied in the Philippines since an order issued by General Otis in September, 1899. Certificates of residence were also required in the insular possessions.

This law is the last important one affecting Chinese immigration. The general policy indicated by the various acts is, judging from the present state of public opinion, not likely soon to undergo further important change. Such modifications as have been introduced during the last seven years have been in the direction of making the administration of the laws stricter and toward a narrower construction of the meaning to be placed upon the words describing the privileged classes.

The reasons for this condition are of two sorts. The people at large, now that a saner attitude toward all our racial questions is developing, are less to be aroused by appeals to abstract equal rights. The presence of elements not easily assimilable among our population has made the public look askance at any action which may introduce another element that may complicate the problem of adjustment. In the Far West the subject is of course a local one and correspondingly acute. There the appeal to keep California a "white man's country" has a greater immediate force on public opinion. Exclusion is there anything but an academic question. In the East, due to the small number of Orientals in the laboring population, interest is less lively. It is an indication of increasing class consciousness that in both sections of the country the laboring classes are the most alive to what Oriental labor means for the white man. Their interests are the ones which will be affected first. For these reasons we can probably look forward to a long period during which our legislation on Oriental immigration will undergo but slight change—unless it be in the direction of further restriction and the inclusion of other races besides the Chinese. That such a development may occur or is perhaps in process is clearly

[35]Act of April 22, 1902, c. 641, 32 Stat. 176.

indicated by the recent agitation on the coast to make the exclusion laws apply to all Oriental immigrants.

For the present an agreement has been reached which may put off or remove altogether the possibility of legislation against Japanese laborers. Japan, like China before her, professedly does not want her emigrants to go to the United States. The desire to get a preponderant influence in Korea and perhaps in Manchuria prompts the government to turn thither all those who leave the home country. Indeed, for some time past it has been the custom of Japan not to issue passports to laborers desiring to go to the United States, but since no restriction was placed on emigration to Hawaii, Canada and Mexico, the regulation was ineffective.

The agitation on the Pacific Coast, which became acute in 1906, forced the attention of Congress to the fact that legislation similar to that in force against the Chinese was being demanded for Japanese immigrants. The excitement was for the time at least allayed by an expedient included in the immigration act of 1907. Placing reliance on the continuation of Japan's policy as regards emigration noted above, Congress authorized the President to exclude from continental United States any immigrants holding passports not specifically entitling them to enter this country. On March 14, 1907, the President exercised this right by an executive order applying to Japanese laborers coming from Mexico, Canada or Hawaii.[36]

Due to this arrangement, the local legislation which caused the excitement was withdrawn, and the "Japanese question" was for the moment out of politics. It is by no means certain, however, that the seeds of future disagreement are removed. The current disputes as to the efficiency of the executive arrangement show that the west coast is in earnest and even yet is not fully satisfied that all which should be done has been accomplished. The whole subject of Japanese immigration is one which calls for careful settlement by a treaty which shall at the same time avoid antagonizing a proud nation and remove an element which unregulated can hardly avoid causing increasing uneasiness and ill feeling on the west coast.

[36]American Journal International Law, I, p. 450.